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ARIZONA ATTORNEY GENERAL

April 28, 1952
Opinion No. 52-121

Mr. Robert Morrison
County Attorney
Pima County Courthouse
Tucson, Arizona

N.B.

We have your letter of April 18, in which you request our opinion as follows:

"We have been asked by the Civil Deputy Sheriff of Pima County for an opinion concerning whether a license fee must be paid by a peddler who is operating in Pima County, but is an employee of a store which is engaged in the business of selling merchandise in Maricopa County.

We have also been requested for an opinion as to the necessity of a license involving door-to-door solicitors, who will, if the purchaser desires, make on the spot delivery of the article ordered, and are employed by employers who own a store and are engaged in the business of selling merchandise outside of Pima County."

As stated in your letter, Section 17-1605, ACA 1939, is the section fixing the tax in such instances and the portion thereof which is applicable to the answer of your question reads as follows:

"Peddlers and traveling merchants--Ap-
plication--Violations--Penalty.--
* * * * *

This section shall not apply to or include any regularly established merchant who owns a store and is engaged in the business of selling merchandise
* * *" (Emphasis supplied)

The Supreme Court of Arizona has had occasion to consider this section of the statute in the case of State of Arizona v. Hooker, 45 Ariz. 202, 41 Pac. 2d 1091. Speaking of the above

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quoted exemption the Court there stated:

" * * * We are of the opinion that it is reasonable to suppose from the language that the intent of the legislature in making the exception was to establish beyond doubt that a person engaged in business at a fixed place and there only should not be considered as a 'traveling merchant, . . . peddler or itinerant vendor,' and that so long as he confined his operations to a fixed place of business, such as is commonly called a store, he was not subject to the license tax. With this meaning attributed to the first exception, it is clearly constitutional, for a person conducting a business, which he owns at a fixed place only, is obviously within a different class from an itinerant peddler and may properly be required to pay a different tax. * * *"

Since such interpretation is essential to the constitutionality of the statute, the meaning of the exemption is narrowed considerably. In both of your questions apparently the person who is contacting the potential purchaser has not "confined his operations to a fixed place of business", as required by the Supreme Court interpretation.

It is therefore our opinion that in both instances a license fee must be paid to the Sheriff pursuant to the provisions of Section 17-1605.

Very truly yours,

FRED O. WILSON
Attorney General

CHARLES C. STIDHAM
Assistant Attorney General

CCS:d